

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

Jessica Yeager, Senior Scientist  
Potesta & Associates, Inc.  
7012 MacCorkle Ave.  
Charleston, West Virginia 25304

OCT 11 2016

Michael Callaghan, Esquire  
Neely & Callaghan  
159 Summers Street  
Charleston, West Virginia 25301

Re: Dam Characterization and Removal Plan of Dams 11 through 20

Dear Ms. Yeager:

Pursuant to Paragraph 24 of the Consent Decree entered in *United States, et al. v. James C. Justice Companies, et al.*, Civ. Action No. 1:15-cv-16018, the U.S. Environmental Protection Agency Region III (EPA), in consultation with the West Virginia Department of Environmental Protection, has reviewed the above-referenced plan submitted dated April 2016. Based on our review, EPA cannot approve the plan in full at this time and offers the following comments.

As an initial matter, EPA is aware that the Greenbrier area, including potentially the Turkey Creek area, experienced significant flooding in June 2016 and that the flooding may or may not have resulted in changed conditions requiring revisions to the submitted plan. Please provide your views as to whether an additional site visit to assess the impacts from the flooding makes sense. In the event you believe further site assessment is necessary in light of the flooding, we would appreciate the opportunity to view the area with you.

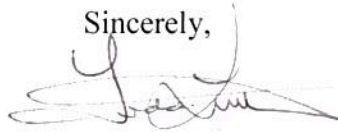
Recognizing the foregoing may result in changes, EPA offers the following comments on the plan as submitted:

- EPA accepts the proposal to use a three-step approach to developing and implementing plans for removal of dams 11-20, removal of dams 1-10, and remaining restoration and mitigation issues. That being said, a schedule for submittal of Volumes II (dams 1-10) and III (remaining issues) should be provided.
- EPA generally concurs with the recommendation to conduct a wetlands survey along the channel to identify any wetlands that may be present so that impacts to them can be avoided during construction.
- While EPA does not object to use of the pre-existing ford crossing at Dam 15 during construction to access the channel, please provide information regarding whether you plan to enhance, modify or remove that structure at the end of the process.

- Post-construction benthic macroinvertebrate and fish monitoring should be included and incorporated into restoration and mitigation performance standards.
- A list of vegetative species to be used for riparian areas and stabilization measures should be included.
- Restoration and mitigation information provided in Volume III should include a proposed planting plan, monitoring plan, performance standards, remediation plans, and success criteria in order to determine if restoration efforts are successful. This information should also include the proposal of additional mitigation to be provided if the proposed measures presented in the mitigation plan are not determined to be successful based on performance standards outlined in the plan.
- The one year monitoring period provided in the plan to determine if further stream restoration techniques are required for stabilization of each dam removal reach is insufficient. The appropriate monitoring period, particularly for vegetative success, which is key to lateral stability, is five years, with performance standards achieved in at least two successive years.

Pursuant to Paragraph 25 of the Consent Decree, a response to these comments should be provided within 60 days. If you have any questions, please contact Stefania D. Shamet of our Office of Regional Counsel at (215) 814-2682 or representatives of Potesta can call me directly at (215) 814-2099.

Sincerely,



Todd Lutte  
Enforcement Coordinator  
Office of Environmental Programs  
Environmental Assessment and  
Innovation Division

cc: Susan Porter – USACE, Huntington  
Jeremy Bandy - WVDEP